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Paper No. 9

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FEB 28 2003

OFFICE OF PETITIONS

In re
James L. Snell, Carl F. Andren and
Leonard Victor Lucas
Reissue Application No. 10/005,483
Filing Date: November 9, 2001
Reissue of Patent No. 5,982,807
Original Issue Date: November 9, 1999
Attorney Docket No. 125.003USR1

DECISION ACCORDING STATUS
UNDER § 1.47(a)

This is a decision on the "Renewed Petition under 37 CFR 1.47(b)" resubmitted by facsimile transmission on February 10, 2003. Petitioner has submitted *prima facie* evidence in the form of a stamped return postcard receipt that this renewed petition, though not of record in the application, was timely filed on December 2, 2002¹.

The petition is GRANTED.

The above-identified reissue application of patent No. 5,982,807 (Issued November 9, 1999) was filed on November 9, 2001, with an unexecuted reissue declaration; missing both the written consent of assignee with statement under 37 CFR 3.73(b), and the statutory basic filing fee; and with additional claim fees due. In response to a "Notice to File Missing Parts of Reissue Application" mailed February 8, 2002, petitioner timely filed the initial petition under § 1.47(b), asserting that status under § 1.47 is proper because sole inventor Snell refuses to join in the application. The petition was dismissed for failure to submit an acceptable declaration in compliance with § 1.175; and consequently, failure to show that inventor Snell refused to join in the application after having been presented with a proper reissue declaration for signature².

¹ A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO. See MPEP 503. Petitioner's postcard is date-stamped December 2, 2002 by the USPTO, and specifically itemizes as being filed a renewed petition under § 1.47 (and supporting documentation) and a one-month extension of time. (Finance records show payment of the extension of time fee in December of 2002).

² A grantable petition under 37 CFR §1.47(b) requires: (1) an acceptable oath or declaration in compliance with 37 C.F.R. § 1.63 and 1.64 or 1.175; (2) the rule 47 applicant must state his or her relationship to the inventor as required by 37 C.F.R. § 1.64; (3) proof that the non-signing inventor cannot be found or reached after diligent effort, or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (4) the petition fee; (5) a statement of the last known address of the non-signing inventor; (6) that rule 47 applicant make out a *prima facie* case (i) that the invention has been assigned to him or her or (ii) that the inventor has agreed in writing to assign the invention to him or her or (iii) otherwise demonstrate a proprietary interest in the subject matter of the invention; and (7) rule 47 applicant must prove that the filing of the application is necessary (i) to preserve the rights of the parties or (ii) to prevent irreparable damage.

On instant renewed petition, petitioner submitted a reissue declaration executed by joint inventors Carl Andren and Leonard Lucas. It is preliminarily noted that this petition is now considered under 37 CFR 1.47(a). Filing under 37 CFR 1.47(b) and 35 U.S.C. 118 is permitted only when no inventor is available to make application. In this instance, inventors Andren and Lucas are available.

A grantable petition under § 1.47(a) requires: (1) an acceptable oath or declaration in compliance with 37 C.F.R. § 1.63 and 1.64 or 1.175; (2) proof that the non-signing inventor cannot be found or reached after diligent effort, or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (3) a statement of the last known address of the non-signing inventor, and (4) the petition fee. On initial petition, petitioner satisfied requirements (3) and (4).

On instant renewed petition, petitioner satisfied requirements (1) and (2). The declaration submitted on instant renewed petition has been reviewed and found in compliance with §§ 1.175 and 1.47(a). An oath or declaration signed by all the available joint inventors with the signature block of the non-signing inventor(s) left blank may be treated as having been signed by all the available joint inventors on behalf of the non-signing inventor(s), unless otherwise indicated. Accordingly, the instant declaration is accepted as being executed by available joint inventors Andren and Lucas on behalf of themselves and on behalf of non-signing inventor Snell.

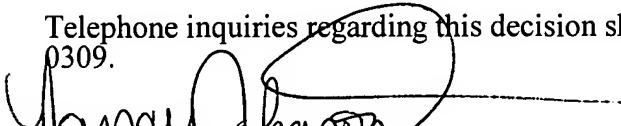
Furthermore, with the instant renewed petition, petitioner submitted proof that non-signing inventor Snell has refused to join in this reissue application after having been presented with the application papers (including the proper reissue declaration). This evidence includes the first hand declarations of Elizabeth Bauer, detailing the presentation of the reissue declaration and application papers to non-signing inventor Snell; and of David Fogg, detailing inventor Snell's subsequent refusal to sign the reissue declaration. Copies of the letters (and mailing labels) transmitting by Federal Express and requesting presentation by hand-delivery (process server) of the application papers to non-signing inventor Snell; and a declaration of the process server, attesting to having served inventor Snell with the papers were made a part of the statements.

In view thereof, this application is hereby accorded Rule 1.47(a) status.

As provided in new Rule 1.47(c), this Office will forward notice of this application's filing to the non-signing inventor at the address given in the petition. Notice of the filing of this application will also be published in the Official Gazette.

The application file is being forwarded to Technology Center 2631 for examination in due course.

Telephone inquiries regarding this decision should be directed to the undersigned at (703) 305-0309.


Nancy Johnson
Petitions Attorney
Office of Petitions



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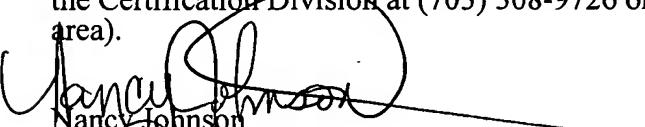
LETTER

Dear Mr. Snell:

You are named as a joint inventor in the above-identified United States reissue application filed under the provisions of 35 U.S.C. 256 (United States Code) and 37 CFR 1.47(a), Rules of Practice in Patent Cases. Should a reissue patent be granted you will be designated therein as a joint inventor.

As a named inventor you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 CFR 1.19) or make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent attorney or agent presenting written authorization from you. If you care to join the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR §§ 1.63 and 1.175.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Nancy Johnson at (703) 305-0309. Requests for information regarding your application should be directed to the File Information Unit at (703) 308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to the Certification Division at (703) 308-9726 or 1-800-972-6382 (outside the Washington D.C. area).


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